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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,848	06/18/2001	Leona E. Ling	CIBT-P01-119	9957
28120 7590 04/03/2007 FISH & NEAVE IP GROUP ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			EXAMINER FETTEROLF, BRANDON J	
			ART UNIT 1642	PAPER NUMBER
			MAIL DATE 04/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/883,848	<b>Applicant(s)</b> LING ET AL.	
	<b>Examiner</b> Brandon J. Fetterolf, PhD	<b>Art Unit</b> 1642	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-2, 26 and 37-57.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Response to the Amendment***

The Amendment filed on 3/05/2007 in response to the previous Final Office Action (12/28/2006) is acknowledged, but has not been entered. The amendment has not been entered because the limitation of "A method of increasing expression of vascular endothelial growth factor (VEGF) in a subject with ischemic myocardial tissue, wherein the method comprises administering to a subject an effective amount of a hedgehog agonist" has not been previously considered and/or searched. As such, the proposed amendment raises new issues that would require further consideration and/or search and do not appear to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

Claims 1-2, 26 and 37-57 are currently pending and under consideration.

**The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.**

### **Rejections Maintained:**

As Applicant's arguments appear to be solely drawn to the proposed amendment which have not been entered, such arguments have not been considered.

Claims 1-2, 26, 37-38 and 42 **remain** rejected and new claims 43-57 **are** under 35 U.S.C. 103(a) as being unpatentable over Porter et al. (US 6,613,798, 2003) as evidenced by Pettet et al. (Proc. R. Soc. Lond. B 1996; 263: 1487-1493) in view of Ferrari et al. (Basic Res. Cardiol. 1995; 90: 52-54) for the reasons of record set forth in the prior office action.

Claims 39-41 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. (US 6,613,798, 2003) as evidenced by Pettet et al. (Proc. R. Soc. Lond. B 1996; 263: 1487-1493) and Ferrari et al. (Basic Res. Cardiol. 1995; 90: 52-54) in further view of Igo et al. (US 5,681,278, 1997) for the reasons of record set forth in the prior office action.

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Claims 1-2, 26, 37-38 and 42-57 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Baron et al. in view of Porter et al. (US 6,613,798, 2003) as evidenced by Pettet et al. (Proc. R. Soc. Lond. B 1996; 263: 1487-1493) for the reasons of record set forth in the prior office action.

Claims 39-41 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Baron et al. in view of Porter et al. (US 6,613,798, 2003) as evidenced by Pettet et al. (Proc. R. Soc. Lond. B 1996; 263: 1487-1493) in further view of Igo et al. (US 5,681,278, 1997) for the reasons of record set forth in the prior office action.

No Claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon J. Fetterolf, PhD whose telephone number is (571)-272-2919. The examiner can normally be reached on Monday through Friday from 7:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley can be reached on 571-272-0898. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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